

AMENDED IN SENATE AUGUST 30, 2011

AMENDED IN SENATE JUNE 23, 2011

AMENDED IN ASSEMBLY MAY 27, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1320**

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**Introduced by Assembly Member Allen  
(Coauthors: Assembly Members Furutani and Ma)**

February 18, 2011

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An act to amend Section 20816 of, and to add Sections 20814.5 and 31453.7 to, the Government Code, relating to public employees' retirement, *and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1320, as amended, Allen. Public employees' retirement: employer contribution rates.

(1) The Public Employees' Retirement Law prescribes employer *rates for* contribution ~~rates~~ to the retirement fund for the Public Employees' Retirement System (PERS). Existing law requires that the state's contribution rate be adjusted in the Budget Act based on rates established by the system's actuary. Existing law provides that the employer contribution rate for an employer other than the state shall be determined on an annual basis by the actuary, as specified. Existing law requires that the rate at which a public employer contributes to the system shall be based upon its experience, and not the experience of public agency employers generally. Existing law requires that all assets of an employer in the system be used to determine the employer's contribution rate.

This bill, on and after ~~January~~ July 1, 2013, would establish ~~in the retirement fund~~ for each employer a ~~Taxpayer Adverse Risk Prevention Rate Stabilization Account in the Employer Rate Stabilization Fund,~~ which this bill would create and which would be continuously appropriated to the Board of Administration of PERS for the purpose of stabilizing employer retirement contributions. By creating a continuously appropriated fund and authorizing the expenditure of employer payments, this bill would make an appropriation. The bill would provide that the board has sole and exclusive control over the administration of the fund and would require that the investment of fund assets be according to strategies established by the board. ~~The account would be~~ bill would provide that the Rate Stabilization Account is an employer asset, but it would not be counted as an asset for the purpose of determining the employer's contribution rate. ~~Deposits into the account would be made~~ The bill would require employers to make payments to the account when the actuarial value of assets exceeds the accrued liability, as specified, which would be calculated based on the employer normal cost of benefits and which would be credited to each employer's Rate Stabilization Account. Payments by the state would be made in the annual Budget Act. The bill would provide that the assets of the account ~~would be~~ drawn upon to pay a portion of the employer contribution when the employer contribution rate is greater than the employer normal cost of benefits, as specified. ~~The bill would require the employer to make an additional contribution when the employer's contribution rate is less than the employer normal cost of benefits, as defined, and that additional contribution would be credited to the employer's Taxpayer Adverse Risk Prevention Account.~~ The bill would provide that the employer ~~would not be~~ *is not* required to make that additional contribution when the employer's ~~Taxpayer Adverse Risk Prevention Rate Stabilization Account~~ exceeds an amount equal to 50% of the employer's assets, exclusive of the assets in the ~~Taxpayer Adverse Risk Prevention Rate Stabilization Account.~~ The bill would permit assets in an account to be used for specified transfers and contributions authorized under existing law. The bill would provide that assets in an account would be invested according to investment strategies established by the Board of Administration of PERS.

(2) The County Employees Retirement Law of 1937 authorizes the board of retirement to determine county or district contributions on the basis of a normal contribution rate, which is computed as a level percentage of compensation which, when applied to future compensation

of the average new member entering the system, together with member contributions, is sufficient to provide for the payment of all prospective benefits of a member.

This bill, on and after ~~January~~ July 1, 2013, would establish in each county or district's retirement fund a ~~Taxpayer Adverse Risk Prevention Rate Stabilization~~ Account. The ~~bill would provide that the~~ account ~~would be~~ is an employer asset, for that county or district, but ~~it would~~ not be counted as an asset for the purpose of determining the employer's contribution rate. ~~Deposits into the account would be made~~ The ~~bill would require employers to make payments~~ when the actuarial value of assets exceeds the accrued liability, as specified, ~~which would be calculated based on the employer normal cost of benefits and which would be credited to each employer's Rate Stabilization Account.~~ The bill would provide that the assets of the account ~~would be~~ drawn upon to pay a portion of the employer contribution when the employer contribution rate is greater than the normal cost of benefits, as specified. ~~The bill would require the employer to make an additional contribution when the employer's contribution rate is less than the employer normal cost of benefits, as defined, and that additional contribution would be credited to the employer's Taxpayer Adverse Risk Prevention Account.~~ The bill would provide that the employer ~~would not be~~ is not required to make that additional contribution when the employer's ~~Taxpayer Adverse Risk Prevention Rate Stabilization~~ Account exceeds an amount equal to 50% of the employer's assets, exclusive of the assets in a ~~Taxpayer Adverse Risk Prevention Rate Stabilization~~ Account. ~~The bill would permit assets in an account to be used for other specified contributions.~~ The bill would ~~provide~~ require that assets in an account ~~would be~~ invested according to investment strategies established by the board of retirement.

Vote: majority. Appropriation: ~~no~~ yes. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 20814.5 is added to the Government
- 2 Code, to read:
- 3 20814.5. (a) For the purposes of this section, the following
- 4 definitions apply:
- 5 (1) "Employer contribution rate" means a rate for payment of
- 6 the total employer contribution, as determined by the actuary

1 according to the most recently completed valuation of the total  
2 liability for the benefits on the account of the employees of the  
3 employer.

4 (2) “Employer normal cost of benefits” means a rate for payment  
5 of normal cost of benefits, as determined by the actuary according  
6 to the most recently completed valuation less the employee  
7 contribution rate.

8 (b) Notwithstanding any other provision of law, the employer  
9 contribution rate shall be adjusted according to the following:

10 (1) If the employer contribution rate, as determined by the  
11 actuary, is greater than the employer normal cost of benefits, then  
12 the employer shall remit an amount, not less than the employer  
13 normal cost of benefits that ~~is, and sufficient~~ *is sufficient*, as  
14 determined by the actuary, when combined with assets transferred  
15 from the ~~Taxpayer Adverse Risk Prevention Rate Stabilization~~  
16 Account established pursuant to subdivision (c), to equal the  
17 employer contribution rate.

18 (2) Except as provided in subdivision (d), if the employer  
19 contribution rate is less than the employer normal cost of benefits,  
20 the employer shall remit the employer contribution rate amount  
21 and make an additional contribution equal to the difference between  
22 the employer contribution rate and the employer normal cost of  
23 benefits. That additional contribution amount shall be credited to  
24 the employer’s ~~Taxpayer Adverse Risk Prevention Rate~~  
25 *Stabilization Account*.

26 (c) ~~For the purposes of subdivision (b), a~~ *There is hereby created*  
27 *in the State Treasury the Employer Rate Stabilization Fund for*  
28 *the purpose of receiving employer payments made pursuant to*  
29 *paragraph (2) of subdivision (b) and stabilizing state and*  
30 *contracting agency employer retirement contributions pursuant*  
31 *to this section. Notwithstanding Section 13340, all moneys in the*  
32 *fund are continuously appropriated without regard to fiscal years*  
33 *to the board for expenditure pursuant to this section. The board*  
34 *has sole and exclusive control over the administration of the fund*  
35 *and the investment of its assets shall be according to strategies*  
36 *established by the board. Payments by the state pursuant to*  
37 *paragraph (2) of subdivision (b) shall be made in the annual*  
38 *Budget Act. A separate account shall be established for each*  
39 *employer in the retirement fund to be known as a* ~~Taxpayer Adverse~~  
40 ~~Risk Prevention Rate Stabilization Account.~~

1 (1) A ~~Taxpayer Adverse Risk Prevention Rate Stabilization~~  
2 Account is an employer asset, but shall not be counted as part of  
3 employer assets for purposes of determining the employer  
4 contribution rate.

5 (2) Deposits to a ~~Taxpayer Adverse Risk Prevention Rate~~  
6 ~~Stabilization~~ Account shall be made when the actuarial value of  
7 assets exceeds the accrued liability as determined by the chief  
8 actuary, according to the most recently completed annual valuation.

9 (3) A ~~Taxpayer Adverse Risk Prevention Rate Stabilization~~  
10 Account shall be drawn from to pay for that portion of the employer  
11 contribution rate that exceeds the employer normal cost of benefits,  
12 pursuant to paragraph (1) of subdivision (b).

13 (4) ~~The funds in a Taxpayer Adverse Risk Prevention Account~~  
14 ~~may be used to make asset transfers pursuant to Section 20816.~~

15 (5) ~~The funds in Taxpayer Adverse Risk Prevention Accounts~~  
16 ~~shall be invested according to investment strategies established by~~  
17 ~~the board.~~

18 (d) Notwithstanding paragraph (2) of subdivision (b), when an  
19 employer's ~~Taxpayer Adverse Risk Prevention Rate Stabilization~~  
20 Account exceeds an amount equal to 50 percent of the employer  
21 assets, other than the assets in the ~~Taxpayer Adverse Risk~~  
22 ~~Prevention Rate Stabilization~~ Account, that employer is not  
23 required to make an additional contribution as specified in  
24 paragraph (2) of subdivision (b).

25 (e) Nothing in this section shall be construed to interfere with  
26 a public retirement board's authority and fiduciary responsibility  
27 as set forth in Section 17 of Article XVI of the California  
28 Constitution. If, and to the extent that, the board of a public  
29 retirement system determines that the receipt of any additional  
30 contributions required under this section would conflict with its  
31 fiduciary responsibility set forth in Section 17 of Article XVI of  
32 the California Constitution, the board may refuse to receive those  
33 contributions.

34 SEC. 2. ~~Section 20816 of the Government Code is amended~~  
35 ~~to read:~~

36 20816. ~~(a) Notwithstanding any other provision of this part,~~  
37 ~~all assets of an employer, other than the assets in a Taxpayer~~  
38 ~~Adverse Risk Prevention Account established pursuant to Section~~  
39 ~~20814.5, shall be used in the determination of the employer~~  
40 ~~contribution rate for the membership comprising the basis of the~~

1 computation. Assets held shall be recognized over the same funding  
2 period used to amortize unfunded accrued actuarial obligations;  
3 whether in excess of the accrued actuarial obligation or not, using  
4 the entry age normal funding method.

5 (b) On and after January 1, 1999, contracting agencies for which  
6 the actuarial value of assets exceeds the present value of benefits  
7 as of the most recently completed valuation, as determined by the  
8 chief actuary, may request that the board transfer employer assets  
9 to member accumulated contribution accounts to satisfy all or a  
10 portion of the member contributions required by this part. That  
11 transfer shall be over a 12-month period provided the actuarial  
12 value of assets exceeds the present value of benefits. In determining  
13 the present value of benefits and the actuarial value of assets for  
14 purposes of this part, liabilities and assets attributed to the 1959  
15 survivor allowance may not be included. On and after January 1,  
16 2003, a transfer of assets may not be made pursuant to this  
17 subdivision unless all or the same portion of the member  
18 contributions of each member in a membership classification are  
19 satisfied through the transfer. An employer electing a transfer of  
20 assets pursuant to this subdivision shall satisfy the members'  
21 contributions for a period of not less than one month and not more  
22 than one year.

23 (c) On and after January 1, 2002, any contracting agency for  
24 which the actuarial value of assets exceeds the present value of  
25 benefits as of the most recently completed valuation, as determined  
26 by the chief actuary, may request that the board transfer from the  
27 contracting agency's employer account excess assets, as determined  
28 by the board subject to the requirements and limitations of Section  
29 420 of the Internal Revenue Code (26 U.S.C. Sec. 420), to a retiree  
30 health account established by the board, in its discretion, in the  
31 contracting agency's employer account pursuant to Section 401(h)  
32 of the Internal Revenue Code (26 U.S.C. 401(h)) for the purpose  
33 of providing health benefits to the contracting agency's retirees  
34 and their covered dependents. The board may, in its discretion,  
35 transfer excess assets from the contracting agency's employer  
36 account to that contracting agency's retiree health account within  
37 that agency's employer account, if the transfer meets the conditions  
38 of a qualified transfer pursuant to Section 420 of the Internal  
39 Revenue Code (26 U.S.C. Sec. 420). The transferred assets shall  
40 be used solely for the payment of current retiree health liabilities.

1 ~~That qualified transfer shall be made only once each year. The~~  
2 ~~board may adopt regulations necessary to implement this~~  
3 ~~subdivision. Notwithstanding any other provision of law, the~~  
4 ~~regulations may provide for the nonforfeiture of accrued pension~~  
5 ~~benefits of participants and beneficiaries of a plan from which~~  
6 ~~excess assets are transferred to the extent necessary for the transfer~~  
7 ~~to meet the conditions of a qualified transfer pursuant to Section~~  
8 ~~420 of the Internal Revenue Code (26 U.S.C. Sec. 420), and may~~  
9 ~~include any other provision necessary under Section 420 of the~~  
10 ~~Internal Revenue Code (26 U.S.C. Sec. 420) or Section 401(h) of~~  
11 ~~the Internal Revenue Code (26 U.S.C. Sec. 401(h)) to accomplish~~  
12 ~~the purposes of this subdivision.~~

13 ~~(d) On and after January 1, 2006, a transfer of assets may be~~  
14 ~~made pursuant to this section and on and after January 1, 2013, a~~  
15 ~~transfer of assets may be made pursuant to Section 20814.5.~~

16 ~~(e) For the purpose of this section, "employer" means any~~  
17 ~~contracting agency, the state, or a school employer.~~

18 ~~(f) The actuarial report in the annual financial report shall also~~  
19 ~~express the effect upon employer contribution rates of this section~~  
20 ~~and of the recognition of net unrealized gains and losses.~~

21 ~~SEC. 3.~~

22 *SEC. 2.* Section 31453.7 is added to the Government Code, to  
23 read:

24 31453.7. (a) For the purposes of this section, the following  
25 definitions apply:

26 (1) "Employer" means the applicable county or district.

27 (2) "Employer contribution rate" means a rate for payment of  
28 the total employer contribution, as determined by the system's  
29 actuary according to the most recently completed valuation of the  
30 total liability for the benefits on the account of the employees of  
31 the employer.

32 (3) "Employer normal cost of benefits" means a rate for payment  
33 of normal cost of benefits, as determined by the system's actuary  
34 according to the most recently completed valuation, less the  
35 employee contribution.

36 (b) Notwithstanding any other provision of law, the employer  
37 contribution rate of the county or district shall be adjusted  
38 according to the following:

39 (1) If the employer contribution rate, as determined by the  
40 actuary, is greater than the employer normal cost of benefits, then

1 the employer shall remit an amount, not less than the employer  
2 normal cost of benefits that is sufficient as determined by the  
3 actuary, when combined with assets transferred from the ~~Taxpayer~~  
4 ~~Adverse Risk Prevention Rate Stabilization~~ Account established  
5 pursuant to subdivision (c), to equal the employer contribution  
6 rate.

7 (2) Except as provided in subdivision (d), if the employer  
8 contribution rate is less than the normal cost of benefits, the  
9 employer shall remit the employer contribution rate amount and  
10 make an additional contribution equal to the difference between  
11 the employer contribution rate and the employer normal cost of  
12 benefits. That additional contribution amount shall be credited to  
13 the employer's ~~Taxpayer Adverse Risk Prevention Rate~~  
14 ~~Stabilization~~ Account.

15 (c) For the purposes of subdivision (b), a separate account shall  
16 be established for each employer in the retirement system to be  
17 known as a ~~Taxpayer Adverse Risk Prevention Rate Stabilization~~  
18 Account.

19 (1) A ~~Taxpayer Adverse Risk Prevention Rate Stabilization~~  
20 Account is an employer asset, but shall not be counted as part of  
21 employer assets for purposes of determining the employer  
22 contribution rate.

23 (2) Deposits to a ~~Taxpayer Adverse Risk Prevention Rate~~  
24 ~~Stabilization~~ Account shall be made when the actuarial value of  
25 assets exceeds the accrued liability as determined by the system's  
26 actuary, according to the most recently completed annual valuation.

27 (3) A ~~Taxpayer Adverse Risk Prevention Rate Stabilization~~  
28 Account shall be drawn from to pay for that portion of the employer  
29 contribution rate that exceeds the employer normal cost of benefits,  
30 pursuant to paragraph (1) of subdivision (b).

31 (4) The funds in ~~Taxpayer Adverse Risk Prevention Rate~~  
32 ~~Stabilization~~ Accounts shall be invested according to investment  
33 strategies established by the board.

34 (d) Notwithstanding paragraph (2) of subdivision (b), when an  
35 employer's ~~Taxpayer Adverse Risk Prevention Rate Stabilization~~  
36 Account exceeds an amount equal to 50 percent of the employer  
37 assets, other than the assets in the ~~Taxpayer Adverse Risk~~  
38 ~~Prevention Rate Stabilization~~ Account, that employer is not  
39 required to make an additional contribution as specified in  
40 paragraph (2) of subdivision (b).



(e) Nothing in this section shall be construed to interfere with a public retirement board's authority and fiduciary responsibility as set forth in Section 17 of Article XVI of the California Constitution. If, and to the extent that, the board of a public retirement system determines that the receipt of any additional contributions required under this section would conflict with its fiduciary responsibility set forth in Section 17 of Article XVI of the California Constitution, the board may refuse to receive those contributions.

~~SEC. 4.~~

*SEC. 3.* This act shall become operative ~~January~~ *July* 1, 2013.